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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Binie V. Lipps

Frederick W. Lipps

Serial No.: 10/716,982

Filed: November 19, 2003

For: Saliva test for early diagnosis of cancers

§ ATTY DCKT NO: FWLPAT019US

§

§ Art Unit: 1642

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§ Examiner: Tidwell, Judy Lille

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§

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that the following papers are being facsimile transmitted to the Patent and Trademark Office, FAX NO: 571-273-8300 on the date shown below.

1. A Petition taken from the Office Action dated August 7, 2006 concerning this application.

(3 pages including cover)

6 September 2006
(Date)


John R. Casperson Reg. No. 28,198

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**PETITION UNDER 37 CFR 1.181
FOR RELIEF FROM ACTIONS TAKEN BY AN EXAMINER**

Sir:

This is a petition from actions taken by the examiner in this application in the Office Action dated August 7, 2007. No claims have been rejected.

In a first office action dated May 8, 2006, a three-way restriction requirement was made. Response with proper election and traverse was made on May 30, 2006.

In a second office action dated August 7, 2006, the first restriction requirement was made FINAL, and another restriction requirement was made under the guise of being a requirement to elect species. No action was taken on the merits. The action taken is violative of 37 CFR 1.143, which required the examiner to substantively act on the claims to the invention elected in response to the first office action.

In paragraph 3 of the office action dated August 7, 2006, the Examiner states that claim 1 is “generic to a plurality of disclosed patentably distinct species. . .wherein the species are (a)

process for determining an immunological reaction wherein antibodies are not produced as part of the assay as contemplated in the specification, (b) process for determining an immunological reaction wherein antibodies against a colony of cancer cells are produced as part of the assay. . . [I]f the species of Group . . . (b) is elected, this species is further subject to election of a single disclosed species. . . ”

This “species within species” analysis is repeated for various claims throughout the office action dated August 7, 2007, which continues on for six pages. It is improper because it is definitionally impossible. The requirement is further improper because it defines as a species something which is allegedly not disclosed by the specification, further definitionally impossible. This analysis is also repeated against various claims throughout the office action.

Applicant should not have to respond to the Office Action dated August 7, 2006 because applicant was entitled to a full and complete office on the merits upon the making of the first restriction requirement Final, which wasn’t done, and further because the second requirement is so definitionally inadequate so as to be violative of due process. Waiver of the running of the statutory time period to respond to the Office Action dated August 7, 2006 is therefore requested.


Remand to the examiner with instructions to withdraw the office action dated August 7, 2006 and issue a full and complete office action on the merits of the elected inventions is also requested.

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Respectfully Submitted:

 6 Sept 06
John R. Casperson
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